

FILED

MO-10-CV 044

APR 16 2010

AO 243 (Rev. 5/85)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODYCLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY

DEPUTY CLERK

United States District Court

District

Western District

Name of Movant

Crystal Munoz

Prisoner No.

79319-180

Case No.

MO-07-cr-119

Place of Confinement

Federal Medical Center Carswell P.O. BOX 27137 Ft.Worth, Tx. 76127

UNITED STATES OF AMERICA

v.

Crystal Munoz

(name under which convicted)

MOTION

1. Name and location of court which entered the judgment of conviction under attack UNITED STATES
DISTRICT COURT WESTERN DISTRICT OF TEXAS MIDLAND DIVISION
2. Date of judgment of conviction October 31, 2007
3. Length of sentence 235 months
4. Nature of offense involved (all counts) Conspiracy to possess with intent to
distribute 1,000 or more kilograms of marijuana.
5. What was your plea? (Check one)
 - (a) Not guilty ☒
 - (b) Guilty ☐
 - (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:
6. If you pleaded not guilty, what kind of trial did you have? (Check one)
 - (a) Jury ☒
 - (b) Judge only ☐
7. Did you testify at the trial?
Yes ☐ No ☒
8. Did you appeal from the judgment of conviction?
Yes ☒ No ☐

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9. If you did appeal, answer the following:

(a) Name of court UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

(b) Result Denied

(c) Date of result 11/18/2008

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court SUPREME COURT OF THE UNITED STATES FIFTH CIRCUIT

(2) Nature of proceeding Writ of Certiorari

(3) Grounds raised Petitioners sentence was imposed by the District Court based upon the premise that the United States Sentencing Guidelines are presumptively reasonable provide a rebuttable presumption of a reasonable sentence. 1A.) Did the sentencing court subject the defendant's sentence to the thorough

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐

(5) Result Denied

(6) Date of result 4/20/2009

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

adversarial testing contemplated by federal sentencing procedure?

2.) During trial, petitioner's counsel was prevented by District Court from cross-examination of cooperating government witness as to the nature of their confinement.

2A.) Whether limitation of cross-examination of government witnesses denied Ms.Munoz her Sixth Amendment constitutional rights to confrontation of witnesses and to present a complete defense?

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(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐

(5) Result _____

(6) Date of result _____

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☐

(2) Second petition, etc. Yes ☐ No ☐

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not.

Counsel advised me that I had two choices. To File a Writ of Cert or a 2255 motion. I was not aware that I could appeal the appeal or the Writ of Cert.

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all ground in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

☒ Conviction obtained by use of coerced confession.

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Denial of effective assistance of counsel.

Supporting FACTS (state *briefly* without citing cases or law) Counsel failed to
effectively argue lacking evidence as to agreement to
conspire to possess and distribute controlled substances.

B.) Counsel failed to cross-examine witnesses to determine
credibility and using methods of impeachment.

B. Ground two: C.) Counsel failed to do a thorough and complete
Pretrial investigation, resulting in a failure to file a

Supporting FACTS (state *briefly* without citing cases or law): successful motion to
suppress evidence, due to a conviction obtained by use of
coerced confession and violation of the privilege against
self incrimination.

D.) Counsel failed to object to unlawful amendment of
indictment.

C. Ground three: E.) Counsel failed to present a variance
between investigating report and trial testimony.

Supporting FACTS (state *briefly* without citing cases or law): F.) Appeal counsel
failed to raise these issues on appeal and to raise issues
trial counsel left to raise on appeal.

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G.) Counsel failed to argue effectively the enhancements
and failed to object to governments denial of acceptance
of responsibility.

H.) Failed to present to court the variance between

Supporting FACTS (state *briefly* without citing cases or law): defendants statements
and actual report made regarding those statements.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them:

Counsel was ineffective and failed to raise these issues on trial
and appeal.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?
Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Dan Wade 1707 W.Wall Midland, Tx. 79701

(b) At arraignment and plea Dan Wade

(c) At trial Dan Wade

(d) At sentencing Dan Wade

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(e) On appeal Jason Leach 308 N.Jackson Odessa, Tx. 79761

(f) In any post-conviction proceeding _____

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐


Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

4/12/2010

(date)


Signature of Movant